

Message

From: Landin, David [dlandin@hunton.com]
Sent: 1/9/2018 6:50:32 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: FW: Cox

I have been reading the Court's decision on RCS
([www.cadc.uscourts.gov/internet/opinions.nsf/03C747A5AB141C90852581FE0055A642/\\$file/16-1105-1710179.pdf](http://www.cadc.uscourts.gov/internet/opinions.nsf/03C747A5AB141C90852581FE0055A642/$file/16-1105-1710179.pdf)).

It seems to me that there are blatant errors of fact and confusions on basic science and statistics in the opinion that might suggest that our reasoning did not receive a careful reading. For example, on p10, the opinion states approvingly that "OSHA supported its selection of the PEL with studies showing that risks of lung cancer exist at 36 µg/m³ and 10 µg/m³, levels lower than the PEL." This conflates estimated with actual levels -- a key point we have emphasized many times that seems to be simply ignored here. Later in that paragraph is a claim that "OSHA rejected Industry's argument because the contrary studies used non-reactive and poorly soluble particles—which silica is not—and therefore the "findings regarding" the particles "[cannot] be extrapolated to crystalline silica.'" This looks almost as if the court holds that silica is not a poorly soluble particle. (I assume they must mean that that they do not consider it non-reactive, but the wording is not very clear.) That same page then goes on to say that "OSHA's no-threshold assumption is supported by substantial evidence." But the substantial evidence consists largely of refusing to distinguish between estimated and true exposures and using an "average cumulative exposure" metric (p. 14) that ignores errors and uncertainties in exposure (and hence in whether it is truly above a threshold). The NLRP3 inflammasome and the biological thresholds it implies make no appearance.

This Court appears to be of one mind with OSHA, and entirely disengaged from any critical challenges, in the sense that this opinion does not seem to be willing to acknowledge that estimated exposures contain errors and uncertainties and that they matter for figuring out true exposure-response relations. I feel that our cogent expositions of what is true and important have been disregarded, as they do not appear to have affected in the slightest the Court's understanding, reasoning, or findings. This is discouraging.

I feel real pressure now to get the NLRP3 story for RCS out there quickly: people need to understand how things work and use that knowledge so that we don't squander zillions of resources achieving nothing useful.

Despite these sobering reflections, I wish you and yours great joy in the New Year, Dale!

Best,

-- Tony
